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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,384	08/15/2003	Erik J. van der Burg	MVMDINC.045A	9493

  

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EXAMINER	
THALER, MICHAEL H	

  

ART UNIT	PAPER NUMBER
3731	

  

NOTIFICATION DATE	DELIVERY MODE
12/14/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
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## Office Action Summary

Application No.

10/642,384

Applicant(s)

VAN DER BURG ET AL.

Examiner

Michael Thaler

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 29-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-36 is/are allowed.
- 6) ☒ Claim(s) 1-15, 29-33 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Nov. 2, 2007 has been entered.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is confusing and inaccurate since movement of the nut relative to the guide tube affects the device's shape because the nut is part of the device and the position of the nut relative to the other parts of the device affects the device's shape. For example, the shape of the device as seen in figure 21 would appear different when the nut is in a different location. Further, the phrase "absent movement of said elongate core" is not understood since movement of the elongate core occurs with movement of the nut.

Claims 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilson et al. (2007/0032817). Gilson et al.

disclose frame 111 and slider assembly 101, the slider assembly 101 being moveable relative to the frame 111 to allow limited motion of a delivery device without substantially affecting the shape or position of the implant (since the distance between stops 106 and 107 is greater than the length of frame 111 to permit frame 111 to slide relative to slider assembly 101 for a limited distance). Gilson et al. fail to disclose a receiving portion which is adapted to releasably engage a delivery device. However, it is old and well known to make the proximal end of a guidewire internally threaded (forming a receiving portion) in order to enable it to be releasably secured to a guidewire extension (which is externally threaded at its distal end). It would have been obvious to include a receiving portion on the proximal end of the Gilson et al. guidewire so that it too would have this advantage. The above well known in the art statement is taken to be admitted prior art because applicant failed to traverse the examiner's assertion (M.P.E.P. 2144.03).

Claims 29, 33 and 37 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Carr (3,548,824). Carr discloses axially moveable core 25, 32, 30, implant 14, a slider assembly comprising guide tube 10, nut 26, wherein movement of the core 25, 32, 30 when

engaged with the nut 26 allows the nut 26 to slide within the guide tube 10 without affecting the shape or position of the implant 14. Alternatively, it would have been obvious that member 14 is capable of being an implant since it can be put inside the body.

Claims 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carr (3,548,824). Carr fails to disclose a slot and flange. However, it is old and well known to use a slot and flange in order to obtain the advantage of insuring that a slidable member does not rotate as it moves longitudinally. It would have been obvious to include slot and flange in the Carr device so that it too would have this advantage. The above well known in the art statement is taken to be admitted prior art because applicant failed to traverse the examiner's assertion (M.P.E.P. 2144.03).

Claims 1-7 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 34-36 are allowed.

Applicant's arguments filed Nov. 2, 2007 have been fully considered but they are not persuasive. As to claims 8-15, the argument that Gilson does not disclose a capture mechanism is

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not understood since the term "capture mechanism" does not appear in the claims. As to claims 29, 33 and 37, the argument that Carr does not disclose flange structures is not understood since no flange structures appear in these claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571) 272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

mht



MICHAEL THALER  
PRIMARY EXAMINER  
ART UNIT 3731